

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEONARD MOORE,

Petitioner,

Civil No: 09-CV-13433
HON. AVERN COHN

v.

MICHIGAN PAROLE BOARD,

Respondent.

ORDER OF SUMMARY DISMISSAL

I. Introduction

Petitioner Leonard Moore has filed a pro se petition for mandamus. Petitioner is currently incarcerated at Baraga Maximum Correctional Facility in Baraga, Michigan. Petitioner asks the Court to issue a writ of mandamus to the Michigan Parole Board ordering his immediate release. For the reasons that follow, the petition will be dismissed and all pending motions will be denied as moot.

II. Discussion

“[F]ederal courts may not issue writs of mandamus to compel state officers to act in accordance with state law.” Hoffman v. Stump, 1998 WL 869972, *6 (6th Cir. Dec. 2, 1998), citing Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984). See also Parker v. Phillips, 27 Fed. Appx. 491, 494 (6th Cir. 2001) (“Federal courts . . . have no authority to issue a writ of mandamus directing a state court or its judicial officers in the performance of their duties”).

Here, plaintiff seeks an order compelling the Michigan Parole Board to release him. Such a request is clearly outside of the Court's mandamus authority. The petition must therefore be dismissed.

Furthermore, although the appropriate avenue for a petitioner challenging the constitutionality of a state court conviction is to file a petition for a writ of habeas corpus under 28 U.S.C. §2254, see Haggard v. State of Tennessee, 421 F.2d 1384, 1386 (6th Cir. 1970), the Court declines to construe the petition for mandamus as seeking habeas corpus relief. First, Petitioner does not allege that his claims are exhausted and it is not clear whether they are. Second, Petitioner has a habeas petitions pending which includes the issue set forth in the writ of mandamus. Moore v. Caruso, No: 09-CV-13100 (E.D. Mich. Aug. 6, 2009) (Murphy, J.).¹

III. Conclusion

Accordingly, for the reasons stated above, the petition for mandamus is DISMISSED. Petitioner's application to proceed in forma pauperis, "Motion for Preliminary Injunction and TRO Order," "Motion for Order for U.S. Marshall to Serve Petitioner of Mandamus," and "Motion to Appoint Counsel" are DENIED AS MOOT.

SO ORDERED.

Dated: September 09, 2009

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

¹Petitioner is a frequent litigator. A review of Court records shows that he has filed in excess of fifty complaints and/or petitions over a nineteen year period and has been barred from filing any additional in forma pauperis civil rights complaints because he is a "three striker" under 28 U.S.C. §1915(g).

09-13433 Moore v. MI Parole Board
Order of Summary Dismissal

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to Leonard Moore
185481, Baraga Maximum Correctional Facility, 301 Wadaga Road, Baraga, MI 49908
on this date, September 9, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160